

HOUSE BILL NO. 196

INTRODUCED BY E. BUTTREY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING HOMEOWNERS' ASSOCIATION LAWS; REQUIRING A LANDOWNER TO FILE AN EXCEPTION TO CERTAIN COVENANTS; ALLOWING CHALLENGES TO VALIDITY; AMENDING SECTION 70-17-901, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 70-17-901, MCA, is amended to read:

"70-17-901. Homeowners' association restrictions -- real property rights. (1) (a) A homeowners' association may ~~not enter into, amend, or not~~ enforce a new or amended covenant, condition, or restriction ~~in such a way~~ that imposes more onerous restrictions on the types of use of a member's real property than those restrictions that existed when the member acquired the member's interest in the real property, ~~unless if~~ the member who owns the affected real property ~~expressly agrees in writing at the time of the adoption or amendment of the covenant, condition, or restriction.~~ files records an exception with the office of the county clerk and recorder of the county where the real property is situated within 120 days of the execution-recording of the covenant, condition, or restriction.

(b) When a member claims the benefit of this subsection (1), ~~the member shall request that the homeowners' association record, or allow recording of, the exception applicable to the member. Upon request by the member, the homeowners' association, the member, or a designee shall record the member's exception with the office of the county clerk and recorder of the county where the real property is situated. The member shall provide notice to the homeowners' association with the date the real property was conveyed to the member of the exemption recording~~ and shall pay the recording fees for the document setting forth the exception.

(c) When a homeowners' association enters into or amends a covenant, condition, or restriction that imposes more onerous restrictions on the types of use of a member's real property than those restrictions that

1 existed when the member acquired the member's interest in the real property, within 7 days of recording the
2 covenant, condition, or restriction the homeowners' association shall notify all members in writing. The notice
3 must contain the following information:
4 (i) a recorded copy of the new or amended covenant, condition, or restriction;
5 (ii) notice that the member may qualify for exception to the covenant, condition, or restriction under this
6 section;
7 (iii) a copy of the approved exception application form provided in subsection (7);
8 (iv) notice that exceptions must be recorded with the office of the county clerk and recorder within 120
9 days of when notice was provided; and
10 (v) notice that proof of the recording must be submitted to the homeowners' association within 150
11 days of when notice was provided.

12 ~~(e)(d)~~ A homeowners' association may challenge the validity of an exception at any time.
13 ~~(d)(e)~~ A member may not claim the benefit of this subsection (1) for actions of a homeowners'
14 association that do not restrict a use of the member's property.

15 (2) A successor-in-interest to a member's real property may not claim the benefit of subsection (1) to
16 the extent that the homeowners' association entered into, amended, or enforced a covenant, condition, or
17 restriction before the successor-in-interest purchased the real property, even if the covenant, condition, or
18 restriction was not enforceable against the previous owner pursuant to subsection (1), unless the successor-in-
19 interest is owned by or shares ownership with the previous member or unless the successor-in-interest is a
20 lender that acquired the real property through foreclosure.

21 ~~(3) A declaration may contain a provision that waives a member's rights under subsection (1). A~~
22 ~~successor-in-interest to a member's real property subject to a covenant, condition, or restriction that waives a~~
23 ~~member's rights may not claim the benefit of subsection (1).~~

24 ~~(3)(4)(3)~~ This section does not apply to a covenant, condition, or restriction:

25 (a) that is not subject to enforcement by a homeowners' association; or
26 (b) that is required in order to comply with applicable federal, state, and local laws, ordinances, and
27 regulations.

28 ~~(4)(5)(4)~~ Nothing in this section may be construed to prevent the enforcement of a covenant,

condition, or restriction limiting the types of use of a member's real property as long as the covenant, condition, or restriction applied to the real property at the time the member acquired the member's interest in the real property.

~~(5)~~~~(6)~~~~(5)~~ Nothing in this section invalidates existing covenants of a homeowners' association or creates a private right of action for actions or omissions occurring before May 9, 2019. However, after May 9, 2019, unless the member has consented as provided by subsection (1), a homeowners' association may not enforce a covenant, condition, or restriction in such a way that limits the types of use of a member's real property that were allowed when the member acquired the affected real property.

~~(6)~~~~(7)~~~~(6)~~ As used in this section, the following definitions apply:

(a) "Homeowners' association" means:

(i) an association of all the owners of real property within a geographic area defined by physical boundaries which:

(A) is formally governed by a declaration of covenants, bylaws, or both;

(B) may be authorized to impose assessments that, if unpaid, may become a lien on a member's real property; and

(C) may enact or enforce rules concerning the operation of the community or subdivision; or

(ii) an association of unit owners as defined by 70-23-102 subject to the Unit Ownership Act.

(b) "Member" means a person that belongs to a homeowners' association and whose real property is subject to the jurisdiction of the homeowners' association.

(c) "Person" means one or more individuals or a legal or commercial entity.

(d) "Real property" has the meaning provided in 70-1-106, except that it is limited to real property governed by a homeowners' association.

(e) "Types of use" means the following lawful types of use of the real property:

(i) use for residential, agricultural, or commercial purposes, unless the use was impermissible according to the written or recorded restrictions;

(ii) the ability to rent the real property, including the land and structures on the real property, for any amount of time; and

(iii) the ability to otherwise develop the real property in accordance with applicable federal, state, and

local laws, ordinances, and regulations, unless the ability was impermissible according to the written or recorded restrictions.

(7) The exception application form provided for in subsection (1)(c)(iii) must read as follows:

"CLAIMED EXCEPTION TO COVENANTS, CONDITIONS, OR RESTRICTIONS

Please Complete/Sign in Blue or Black Ink

Property Owner(s)

Name(s):

Mailing Address:

City: State Zip

Homeowners' Association

Name(s):

Mailing Address:

City: State Zip

Property Description

Legal Description: Attached []

Add./Subd. Block Lot

County City/Town Section Township Range

Date of Conveyance to Property Owners: Day Month Year

Subdivision Covenants, Conditions, & Restrictions

County Recorded in:

Recorded as: Instrument No. Book Page

Date Recorded: Day Month Year

Amendment - 1st Reading - Requested by: Edward Buttrey

67th Legislature

Drafter: Joe Carroll, 406-444-3804

HB 196.1.2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exception Information

Pursuant to Mont. Code Ann. § 70-17-901, I/We as the Property Owner(s) listed above and as
member(s) of the above-described Homeowners' Association, hereby claim an exception from Section(s)
_____ of the above described Covenants, Conditions, & Restrictions, recorded as
Instrument No. _____ Book _____ Page _____, recorded on the _____ day of
_____ (month), _____ (year).

[signature page follows]

_____ / _____
(Property Owner Signature) (Date)

_____ / _____
(Property Owner Signature) (Date)

STATE OF MONTANA
COUNTY OF _____

The instrument was acknowledged before me on _____ (date), by
_____ (name(s) of Property Owner(s)).

Notary Public
Printed Name: _____
My Commission Expires: _____

_____ / _____
(HOA Authorized Agent Signature) (Date)

Amendment - 1st Reading - Requested by: Edward Buttrey

67th Legislature

Drafter: Joe Carroll, 406-444-3804

HB 196.1.2

1 Title: _____

3 STATE OF MONTANA

4 COUNTY OF _____

6 The instrument was acknowledged before me on _____ (date), by

7 _____ (name(s)) as _____ (title) of

8 _____ (name of HOA).

11 Notary Public

12 Printed Name: _____

13 My Commission Expires: _____ "

15 NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval.

17 NEW SECTION. Section 3. Retroactive applicability. [This act] applies retroactively, within the
18 meaning of 1-2-109, to covenants, conditions, and restrictions ~~executed~~ recorded on or after May 8, 2019. For
19 any covenant, condition, or restriction recorded before the passage and approval of [this act], the 120-day
20 period provided in 70-17-901(1)(a) may not begin until notification by the homeowners' association to the
21 members of the covenant, condition, or restriction as specified in 70-17-901.

22 - END -